MDR: M4-02-3175-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective September 1, 1993 and Commission Rule 133.305 Titled (Request for Medical Dispute Resolution), a dispute resolution review was conducted by the Medical Review Division regarding a medical payment dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement for spinal surgery.

   b. The request was received on 4-15-02.

II. EXHIBITS

1. Requestor

   a. TWCC 60 and Letter Requesting Dispute Resolution
   b. HCFA1500's
   c. EOB
   d. Medical Records
   e. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.

2. Respondent: Based on Commission Rule 133.305 (h), the Division forwarded a copy of the request to the insurance carrier on 6-26-02. The insurance carrier did not submit a response to the request. The "No Response Submitted" sheet is reflected in Exhibit 2 of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor: ___: "___was diagnosed as having L2-3, L3-4; L4-5 herniated nucleus pulpous, left L4-S1 and right L4-5 radiculopathies, spinal stenosis and chronic nicotine abuse. The patient underwent two surgical procedures. The initial index procedure consisting of an anterior L2-3, L3-4, L4-5 discectomies. Anterior L2-3, L3-4, L4-5 fusion with femoral and iliac allograft and anterior internal fixation and L2-3, L3-4, L4-5 bone grafts. Subsequently, the patient had L2-L5 intertransverse fusion using right iliac crest bone graft and internal fixation. I have previously submitted my fees for services rendered and you have refused to pay such fees based on your defense of under global fee. I hereby challenge your defense and request fair review…

My notes will support my position and show that in each disc level L2-3, L3-4 and L4-5 I performed an anterior discectomy and performed a complete anterior discectomy and it was performed to the extent that posterior longitudinal ligament was explored in each and every case…bone grafts are sculpted for each and every level and this likewise should be compensated on an individual basis.

Lastly, a three level fusion was performed using bone grafts and this likewise requires compensation…"

2. Respondent: The insurance carrier did not submit a response to the request.

IV. FINDINGS

1. Based on Commission Rule 133.305(d)(1-2), the only date of service eligible for review is 7-18-01.

2. Based upon the operative reports, on 7-18-01 the claimant underwent the following procedures:

   a. Anterior L2-3, L3-4 and L4-5 diskectomies;
   b. Anterior L2-3, L3-4, L4-5 fusion with femoral and iliac allograft;
   c. Anterior internal fixation of L2-3, L3-4 and L4-5 bone grafts;
   d. L2-5 intertransverse fusion using right iliac crest bone graft; and
   e. L2-L5 internal fixation with Synthes plate.

3. The following table identifies the disputed services and Medical Review Division's rationale:

DOS	**CPT CODE**	**BILLED**	**PAID**	**EOB Denial Code**	**MAR$ (Maximum Allowable Reimbursement)**	Code Description
7-18-01	22558	$4516.00	$0.00	G	$2660.00	Arthrodesis, anterior interbody technique; lumbar with bone graft
7-18-01	22899	$4511.00	$0.00	G	DOP	Unlisted procedure – spine
7-18-01	22899	$1373.00	$0.00	G	DOP	Unlisted procedure – spine
7-18-01	22899	$1373.00	$0.00	G	DOP	Unlisted procedure – spine
7-18-01	20902 x3	$3750.00	$0.00	F, N	526.00 x3 = $1578.00	Removal of bone for graft major or large
7-18-01	20902	$1724.00	$0.00	N	$526.00	Removal of bone for graft major or large
7-18-01	22585AP	$1355.00	$0.00	G	$637.00	Arthrodesis, anterior or anterolateral, each additional interspace (list separately in addition to single level arthrodesis).
7-18-01	22585AP	$1355.00	$0.00	G	$637.00	Arthrodesis, anterior or anterolateral, each additional interspace (list separately in addition to single level arthrodesis).
7-18-01	22845AP	$8400.00	$2950.00	F	$2950.00	Anterior Instrumentation
7-18-01	22842AP	$6251.00	$3400.00	F	$3400.00	Posterior Instrumentation, segmental fixation (eg, pedicle fixation, dual rods with multiple hooks and subliminal wires.

7-18-01	22612AP	$4469.00	$2529.00	F	$2529.00	Arthrodesis, posterior or posterolateral technique, with local bone or bone allograft and/or internal fixation, lumbar
7-18-01	22650AP	$2718.00	$637.00	F	$637.00	Arthrodesis, posterior, posterolateral or lateral transverse process technique, each additional interspace
Totals		$41,795.00	$9516.00			

V. REFERENCE

a. According to the *Medical Fee Guideline,* Surgery Ground Rule (I)(A)(1) titled Global Fee Concept, "The concept of a global fee for surgical procedures is a long established concept under which a single fee is billed and paid for all necessary services normally performed by the surgeon before, during, and after the surgical procedure. The global reimbursement, as listed, includes the pre-operative care necessary for the specific surgical procedure, completion of hospital records, initiation of treatment, local anesthesia (including local infiltration, digital block, or topical anesthesia), the surgical procedure, and post-operative care that normally follows the specific surgical procedure."

b. According to the *Medical Fee Guideline,* Surgery Ground Rule (I)(D)(1) titled Multiple Procedures, "a) 100% of the MAR for the primary procedure, (major procedure reflecting the greatest value); b) 50% of the MAR for secondary or subsequent procedures when: i) the secondary or subsequent procedures are performed through the same incision and related to the primary procedure."

c. According to the *Medical Fee Guideline,* Surgery Ground Rule (I)(E)(7) titled Separate Procedures, "Some procedures are commonly carried out as an integral part of a total service or complete procedure and do not warrant a separate identification. The unbundling of integral parts of a total procedure with a separate charge for each shall not be reimbursed. A procedure performed independently of other services should be listed as a separate procedure and reimbursed."

d. According to the *Medical Fee Guideline,* Surgery Ground Rule (I)(E)(2) titled Arthrodesis, "a) All arthrodesis procedures include those vertebral graft preparations, such as diskectomy, necessary to accomplish the arthrodesis. b) When vertebral procedures (eg. Laminectomy) are followed by arthrodesis, the arthrodesis is billed with modifier-51 and the multiple procedure rule applies to anterior and/or posterior arthrodesis."

e. TWCC Advisory 97-01, states, "The word 'minimal' was omitted from the section by clerical error. As corrected it reads 'All arthrodesis procedures include those vertebral graft preparations, such as minimal diskectomy, necessary to accomplish the arthrodesis.' Preparation of the arthrodesis site, such as minimal diskectomy, is not separately billable and is considered to be part of the arthrodesis procedure. A full diskectomy procedure may be billed separately if not included as part of the global procedure for arthrodesis.

Refer to *Global Service Data for Orthopedic Surgery*, revised edition, January 1994…for services excluded and included in the arthrodesis procedure performed".

f. According to the *Medical Fee Guideline,* Surgery Ground Rule (I)(D)(2), "Procedures that are performed only as additions to other procedures are already reduced accordingly in the fee guideline and shall not be further reduced as per the Multiple Procedure Rule."

g. According to the *Medical Fee Guideline,* Surgery Ground Rule (I)(E)(1), "Posterior or anterior instrumentation (codes 22840-22845) is listed separately in addition to the code(s) for fracture, dislocation or arthrodesis of the spine (codes 22305-22812). The instrumentation code(s) should be listed as a secondary procedure, without further reduction. Reimbursement shall be allowed posteriorly or anteriorly for the placement of fixation devices. Instrumentation is performed on a spine that is unstable, and usually multiple levels are involved."

h. Section 413.011(b) of the Act states, "Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

VI. RATIONALE

Medical Review Division's rationale:

a. A review of the EOB indicates that the insurance carrier correctly paid per MFG for the anterior and posterior instrumentation, but incorrectly paid for the posterior arthrodesis. Based upon Surgery Ground Rule, when "vertebral procedures (eg. Laminectomy) are followed by arthrodesis, the arthrodesis is billed with modifier-51 and the multiple procedure rule applies to anterior and/or posterior arthrodesis". The arthrodesis followed a vertebral procedure, Diskectomy; therefore, the arthrodesis should have been paid $2529.00 X 50% = $1264.50. A refund of $1264.50 is recommended.

b. CPT Code 22899 - Lumbar diskectomy: The operative report indicated that "L2-3 and L4-5 disks were exposed and needles were placed in those disks. A lateral x-ray was obtained confirming this to indeed be the case. First attention was directed to the L4-5 annulus…Using curet and pituitary a diskectomy was performed in a piece meal fashion. Dissection was carrier out posteriorly in the posterior longitudinal ligament…Using ring curet end plate cartilage was removed off the inferior aspect of L4 as well as superior aspect of L5. Subchondral bone was likewise decorticated using ring curet…The anterior annulus was cleaned using peanut.

Using #15 blade the anterior annulus was incised using box type incision.
Using end-plate cutter, end plate separated from the annulus first the inferior aspect of L3 and subsequently the superior aspect of L4. Using curets and pituitaries L3-4 diskectomy was performed in a piece meal fashion…. Using end plate cutter, the end plate was separated from the annulus, first the inferior aspect of L2 and subsequently the superior aspect of L3. Using curet and pituitary L2-3 diskectomy was performed in a piece meal fashion." The operative report supports diskectomy at L2-3, L3-4 and L4-5. Per TWCC Advisory 97-01, since this was not a minimal diskectomy it is not global and may be billed separately.

The respondent did not dispute the amount billed of $4511.00 as not fair and reasonable per Section 413.011(b).

The appropriate reimbursement is $4511.00 for the primary diskectomy. The second and third diskectomy should be reimbursed at 50% billed since multiple procedure applies. The requestor billed $1373.00 for each level. ($1373.00 X 2) 50% = $1373.00 is recommended.

c. CPT Code 22558AP and 22585AP (X2)– Arthrodesis, anterior interbody technique: Based upon the operative report "Femoral shaft allograft bone grafts were subsequently sculpted to fill each respective void…AO titanium screw with washer was inserted into the anterior superior aspect of L3 in order to perform internal fixation of L2-3 bone graft. Next, attention was directed to the L4-5 interspace…iliac cancellous bone which had been previously sculpted to fill the void was subsequently inserted and recessed. Next, a 30 x 6.5 AO titanium screw with washer was inserted into the anterior inferior aspect of L4 in order to perform the internal fixation of the L4-5 bone graft. Subsequently, attention was directed to the L3-4 interspace…The interspace was copiously irrigated using sterile saline solution. A 16 mm femoral shaft allograft bone graft …was subsequently inserted and recessed. Next, a 30 x 6.5 AO titanium screw washer was inserted in the anterior superior aspect of L4. A second screw and washer was inserted in the anterior inferior aspect of L3…" The operative report supports anterior approach fusion of 3 levels.

Therefore, per Surgery GR (I)(E)(2), the arthrodesis is a secondary procedure, and the multiple procedure applies. CPT code 22558AP has a MAR of $2660.00 x 50% = $1330.00. Reimbursement of $1330.00 is recommended.

CPT code 22585AP (X2) is a code exempt from multiple procedure rule per Surgery GR (I)(D)(2). 22585AP has a MAR of $637.00; therefore, $637.00 X 2 = $1274.00 is recommended.

The insurance carrier paid the requestor for the posterior approach fusion with additional interspace. The requestor did not dispute reimbursement.

d. CPT Code 20902 – Removal of bone for graft: Per the GSDOS, CPT code 22554 – Arthrodesis, anterior interbody technique, cervical with bone graft, harvesting of bone graft from distant site (separate incision)(e.g. code 20902) is not included in the global service package. CPT code 22558 Arthrodesis, anterior interbody technique, lumbar with bone graft is a subsection of 22554, and therefore, the same rule applies. Based upon the GSDOS and operative report, the insurance carrier was incorrect to deny reimbursement per *Medical Fee Guideline* or that the procedure was not documented. A review of the operative report supports that femoral shaft allograft bone graft was used. The operative report does not support that separate incisions were performed to prepare the four (4) bone grafts. 20902 is not a code exempt from multiple procedure rule. Reimbursement for one (1) 20902 for $526.00 x 50% = $263.00 is recommended.

Therefore, the requestor is entitled to reimbursement of $4511.00 + $1373.00 + $1330.00 + $1274.00 + $263.00 minus refund of $1264.50 = $7486.50.

The above Findings and Decision are hereby issued this 10th day of March 2003.

Elizabeth Pickle
Medical Dispute Resolution Officer
Medical Review Division

EP/ep

VII. ORDER

Pursuant to Sections 402.042,413.016, 413.031, and 413.019 the Medical Review Division hereby ORDERS the respondent, ___, to remit $7486.50 plus all accrued interest due at the time of payment to the requestor, ___, PA, within 20 days receipt of this order.

This Order is hereby issued this 10th day of March 2003.

Roy Lewis, Supervisor
Medical Dispute Resolution
Medical Review Division

RL/ep